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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 578

Case No. 621: HASSANI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 24 September 1991, Souhila Hassani, a former staff member of the United Nations, filed an application the pleas of which read as follows:

"II. PLEAS

7. The Applicant respectfully requests the Administrative Tribunal to find that:

(a) the Respondent's decision not to renew the Applicant's contract beyond 31 December 1990 was based on ill-founded assessments of her performance;

(b) the Respondent had denied the Applicant proper redress;

(c) the Respondent denied the Applicant due process by:

(i) failing to respond to her request for a conciliatory procedure,

(ii) accepting the Joint Appeals Board report which improperly based its recommendation on ill-founded assessment of the Applicant's performance.

(d) the Respondent has failed to properly and fairly administer his staff, specifically the Applicant, by:

(i) giving her inappropriate and or insufficiently defined assignments,

(ii) allowing her performance to be judged on the basis of ill-defined criteria in the absence of a proper job description.

...

8. Wherefore the Applicant most respectfully requests the Administrative Tribunal to order:

(a) the Applicant's reinstatement in UNIC [United Nations Information Centre] in an appropriate post commensurate with her qualifications and experience,

(b) her record of service in UNIC be effectively cleared of all prejudicial assessments to show that she has performed her functions with the competence and dedication required of a staff member of the United Nations,

(c) the payment of compensation for the disruption to the Applicant's career of an amount equivalent to four years net base salary at her grade G-6,

(d) the further payment of compensation for the moral suffering and prejudice inflicted on the Applicant in an amount equivalent to two years net base salary at G-6."

Whereas the Respondent filed his answer on 24 February 1992;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 January 1982. She was initially offered a three-month fixed-term appointment as a Secretary at the G-6 level at the United Nations Information Centre (UNIC) in Algiers. She served thereafter on a succession of fixed-term contracts of varying duration, the last expiring on 31 December 1990.

During her service with the United Nations, the Applicant's performance was evaluated in six performance evaluation reports. In the first three performance reports, covering the period 1 January 1982 to 23 June 1984, the Applicant's overall performance

was rated as "a very good performance". In the fourth performance report, covering the period 1 November 1984 to 31 March 1985, and the fifth performance report, covering the period 1 April 1985 to 31 March 1987, the Applicant's overall performance was rated "fair". The Applicant instituted a rebuttal against the fifth performance report. In its report dated 3 December 1987, the Rebuttal Panel which conducted its investigation in accordance with administrative instruction ST/AI/240/Rev.2, did not advise altering the ratings in the performance report. On the other hand, it recommended the deletion from an attachment to the fifth performance report of a paragraph which referred to the Applicant's "superficial attitude" in fulfilling "her administrative responsibilities" and her "lack of interest and knowledge" in those areas. The Panel also recommended that the Applicant's duties should be defined more clearly.

On 4 April 1988, in her appraisal of the Panel's report, the Under-Secretary-General for Public Information accepted these recommendations and agreed that "in small offices away from Headquarters staff should to the extent possible assist in areas other than those which apply strictly to a particular job" and that there was "a need to more clearly define [the Applicant's] duties and responsibilities bearing in mind the nature of a consolidated office". She also recommended that "an updated job description for the post of Secretary, UNIC Algiers should be prepared".

On 8 May 1990, the Applicant signed her sixth performance report, covering the period 1 June 1988 to 31 March 1990, in which her overall performance was rated "fair". The Applicant did not institute a rebuttal to this report.

On 5 September 1990, the Applicant requested the Secretary-General to review the administrative decision not to renew her fixed-term appointment beyond 31 December 1990. In her request, the Applicant argued:

> "I did not contest the latest performance evaluation report, which I signed on 8 May 1990, because I was discouraged by the fact that nothing came of the objections to the report covering the period 1 April 1985 to

31 March 1987. Headquarters responded to my objections by asking me to name a Panel (choose three from five nominees). The Panel interviewed me on one occasion and asked me a series of questions, which I answered ... Since then, absolutely nothing.

In signing the latest report, I was merely acknowledging receipt."

On 30 October 1990, the Applicant lodged an appeal with the Joint Appeals Board. In a cable dated 26 November 1990, the Applicant asked the Secretary of the Board for a stay of action on the decision not to extend her fixed-term appointment. The Board adopted its report on this question on 21 December 1990, recommending against the Applicant's request. The Secretary-General accepted this recommendation on 8 January 1991. The Board adopted its report on the merits of the case on 20 June 1991. Its conclusions and recommendation read as follows:

"Considerations

9. The Panel considered that in this case, as in any appeal of a decision not to extend a fixed-term appointment, it was not called on to re-evaluate Appellant's performance. It was called upon to determine whether there was any indication of prejudice or other extraneous factor affecting the decision not to extend, and whether Appellant had been given any reason to expect that an extension would be granted.

10. The Panel had already noted 'the absence of any allegation of prejudice or other extraneous factor by the Appellant' in its Report No. 810 on Appellant's request for suspension of action. No such allegation was made in subsequent communications or submissions from Appellant.

11. The Panel could find no indication that would justify an expectation of renewal of contract by Appellant. It felt, in fact, that the succession of brief fixed-term extensions granted to Appellant could only be interpreted as confirming the specific duration of the contractual commitment. The Panel noted in this connection the exchange of cables between Headquarters and the Resident Representative Director, UNIC, in August 1990, in which the latter stated 'I personally feel she should be given decent time to prepare herself and look around for another job,' and which ultimately led to her final four-month extension.

12. In reviewing the arguments of Appellant's Counsel, the Panel found nothing that touched on the two essential points of consideration. It did find evidence which tended to weaken the force of Counsel's contentions. For example, the memorandum of 5 April 1988 from the Executive Officer, DPI [Department of Public Information], transmitting the appraisal of Appellant's rebuttal to OHRM [Office for Human Resources Management] indicates that copies were being sent to Appellant and to the Resident Representative, Algiers. Appellant's statement that she never received it must, thus, be considered as 'not proven'. More substantively, the appraisal of the Under-Secretary-General for Public Information confirmed the validity of the assumptions underlying the evaluation of Appellant's performance. Finally, the Panel could discern no causal link between the absence of a job description and the decision not to extend Appellant's appointment.

Recommendation

13. The Panel, therefore, decides to make no recommendation with respect to this appeal."

On 25 June 1991, the Officer-in-Charge, Department of Administration and Management, transmitted to the Applicant a copy of the Board's report and informed her that the Secretary-General had re-examined her case in the light of the Board's report and had decided to maintain the contested decision.

On 24 September 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision not to renew the Applicant's fixed-term appointment was based on an ill-founded assessment of her performance.

2. The failure to implement the decision of the Under-Secretary-General for Public Information that "an updated job description for the post of secretary, UNIC Algiers should be prepared" was a managerial deficiency that affected the Applicant's rights.

3. The Respondent did not evaluate the Applicant's services for the periods April 1987 to May 1988 and April to December 1990.

Whereas the Respondent's principal contentions are:

1. Fixed-term appointments expire on the date indicated therein and neither prior renewals nor outstanding performance create a legal expectancy of renewal.

2. The Applicant received reasonable consideration for a career appointment pursuant to General Assembly resolution 37/126 of 17 December 1982.

The Tribunal, having deliberated from 29 October to 17 November 1992, now pronounces the following judgement:

I. The Applicant contests the Secretary-General's decision following a unanimous recommendation by the Joint Appeals Board, which rejected the appeal filed after the decision by the Administration of the United Nations Information Centre in Algiers not to renew her fixed-term appointment beyond 31 December 1990. The Applicant considers that the decision was based on an erroneous assessment of her merits. In addition, she considers that the decision resulted from managerial deficiency.

II. In his pleas, the Respondent requests that the application should be rejected, arguing, first of all, that under the Staff Regulations, a fixed-term appointment expires on the date indicated therein and neither prior renewals nor extensions create a legal expectancy of renewal.

The Respondent adds that the Applicant's administrative situation received consideration, pursuant to General Assembly resolution 37/126 of 17 December 1982.

III. The Tribunal notes that, as it has constantly affirmed in its decisions, under the provisions of the Staff Rules and Regulations, a fixed-term appointment normally ends on its expiration date, and prior renewals cannot create, for the staff member, a legal expectancy of renewal or conversion to any other type of appointment

(see Judgement No. 173, Papaleontiou, para. II; Judgement No. 205, El Naggar, para. IV; Judgement No. 427, Raj, para. XI; Judgement No. 440, Shankar, para. IV; Judgement No. 496, B, paras. V-IX; and Judgement No. 471, Byfield, para. XIII).

IV. The present case concerns a fixed-term appointment that was due to expire on the date indicated therein. Accordingly, the Secretary-General acted well within his discretionary authority in not renewing the appointment. The Tribunal also notes that in this case the Administration was not motivated by factors extraneous to the interests of the service (see Judgement No. 312, Roberts, paras. VI and VII; Judgement No. 494, Rezene, para. XIX; and Judgement No. 561, Edussuriya, para. III). The Applicant fails to establish the existence of injury for which the Administration is liable and for which redress is available. Lastly, the Tribunal notes that the Applicant does not base her claim for the renewal of the appointment on conclusive evidence or on any promise of renewal shown by the circumstances of the case (see Judgement No. 267, Adler, para. XXIV; and Judgement No. 440, Shankar, para. V).

On the contrary, the Tribunal notes that in the exchange of communications between Headquarters and the UNDP Resident Representative, who was then also Director of the United Nations Information Centre in Algiers, the latter wrote (in August 1990), in connection with the Applicant's administrative situation: "I personally feel she should be given decent time to prepare herself and look around for another job." Thus, the Applicant cannot claim that the Administration gave her any legal expectancy of renewal of appointment. It follows, that all those contentions should be rejected.

V. The Tribunal notes that between 1987 and 1988 and between 3 April and 3 December 1990, there was no evaluation of the Applicant's performance, even though that was required, under administrative instruction ST/AI/240. The Tribunal further notes that the Applicant's duties had not been clearly defined.

Nevertheless, the Tribunal considers that those shortcomings, while regrettable, did not have the effect of making the decision an improper one.

VI. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Hubert THIERRY
Member

Mikuin Leliel BALANDA
Member

New York, 17 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary